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August 14, 2023

VIA ECF

The Honorable Leonard P. Stark
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Robert B. Pincus, Esq.
Special Master for the United States District
Court for the District of Delaware
PO Box 4570
Wilmington, Delaware 19807

**Re: *Crystallex International Corporation v. Bolivarian Republic of Venezuela et al.*,
C.A. No. 17-mc-151-LPS**

Dear Judge Stark and Special Master Pincus:

I write on behalf of Crystallex International Corporation (“Crystallex”) to provide the below Attached Judgment Statement in response to Special Master Pincus’s letter dated August 7, 2023 (D.I. 652).¹

Request No. 1: A short summary of the parties’ underlying dispute.

From 2002 through 2011 Crystallex, a Canadian mining company, spent hundreds of millions of dollars—including significant, long-lasting investments in local schools and infrastructure—developing the valuable Las Cristinas gold mine in Venezuela. Through a series of events culminating in 2011, the Venezuelan government unlawfully expropriated Crystallex’s interests in the Las Cristinas mine.

As a result of Venezuela’s misconduct, Crystallex commenced an arbitration against Venezuela in Washington, D.C. pursuant to a bilateral investment treaty between Canada and Venezuela. On April 4, 2016 Crystallex obtained an arbitration award in the amount of \$1.2 billion, plus interest, against Venezuela stemming from Venezuela’s unlawful expropriation of Crystallex’s investment.

Crystallex’s award was confirmed by the U.S. District Court for the District of Columbia, which entered a judgment against Venezuela on April 7, 2017. The United States Court of Appeals for

¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Court’s Sale Procedures Order, D.I. 481, entered October 11, 2022, and in the Special Master’s letter to all Judgment Holders, D.I. 652, filed August 7, 2023.



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the D.C. Circuit subsequently affirmed that judgment. Crystallex registered its judgment with this Court—the U.S. District Court for the District of Delaware—on June 19, 2017.

On August 9, 2018 this Court issued a writ of attachment against the shares of PDV Holding, Inc., a Delaware corporation owned by Venezuela through its alter ego, PDVSA. That attachment was later affirmed by the United States Court of Appeals for the Third Circuit. The United States Supreme Court denied PDVSA and Venezuela's subsequent petition for a writ of certiorari. This Court also denied Venezuela's motion to quash and under Fed. R. Civ. P. 60(b) seeking to set aside the writ on various theories. The United States Court of Appeals for the Third Circuit dismissed Venezuela's attempted appeal from those rulings for want of jurisdiction, and it later declined Venezuela's efforts under the collateral order doctrine and 28 U.S.C. § 1292(b) to seek review of those and other rulings by this Court.

As this Court has repeatedly held, Crystallex holds a valid, perfected lien against the shares of PDV Holding that is not subject to appeal.

Request No. 2: A description of any collection efforts by the Judgment Holder to-date.

While Crystallex does not believe that any other enforcement efforts are relevant to determining the outstanding amount of the judgment, in response to this request Crystallex notes that in addition to the instant action and the action in the District Court for the District of Columbia in which the judgment originally issued, Crystallex has initiated the following actions in connection with the judgment and/or the underlying Award:

Crystallex International Corp. v. Petróleos de Venezuela, S.A., PDV Holding, Inc., and CITGO Holding, Inc., Civil Action No. 15-CV-01082 (D. Del.) (currently stayed);

Crystallex International Corp. v. Petróleos de Venezuela, S.A., PDV Holding, Inc., Rosneft Trading S.A., and GLAS Americas, LLC, Civil Action No. 16-CV-01007 (D. Del.) (currently stayed);

Crystallex International Corporation v. Bolivarian Republic of Venezuela, Case No. 17-MC-00205 (S.D.N.Y.) (registering judgment and related enforcement proceedings); and

Crystallex International Corporation v. The Bank of New York Mellon (Respondent) and The Ministry of Defense of the Bolivarian Republic of Venezuela, Case No. 17-CV-07024 (S.D.N.Y.) (voluntarily dismissed).

Outside of the United States, the Award has been recognized in Canada and the Netherlands. Crystallex also brought proceedings to hold PDVSA liable for the Award against Venezuela in the Netherlands, which is currently stayed by agreement of the parties.

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Request No. 3: The initial amount of the applicable judgment.

Crystallex's judgment was issued by the United States District Court for the District of Columbia on April 7, 2017 in an action styled *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, Civil Action No. 16-CV-00661 (D.D.C.). The amount of the judgment is \$1,389,587,646.92, comprised of damages in the amount of \$1,202,000,000.00 and pre-award interest from April 13, 2008 to April 4, 2016 (the date of the Award) at a rate equal to the 6-month average U.S. Dollar LIBOR plus 1%, compounded annually).

Including post-award interest that the D.C. District Court ordered be included in the judgment, but which was omitted due to an apparent clerical error, the total amount owed Crystallex as of the date the judgment was entered was \$1,420,677,340.95 (i.e., \$31,089,694.03 greater than the amount stated on the judgment). Crystallex's calculations herein are based on that number.²

Request No. 4: The amount by which the judgment has been reduced, if at all, as a result of any collection efforts by the Judgment Creditor.

To date, Crystallex has recovered funds and assets creditable against the judgement and the interest accrued thereon in the amount of \$500,078,632.15.

Request No. 5: The proposed rate at which post-judgment interest is, or may be, accruing on the applicable judgment, including a proposed formula to be used for calculation of post-judgment interest on a daily-basis.

While the Award itself accrues interest at a rate equal to at the rate of the 6-month average U.S. Dollar LIBOR plus 1%, compounded annually, D.I. 4-1 at 142, pursuant to 28 U.S.C. § 1961, post-judgment interest accrues "at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a). Such interest is "computed daily to the date of payment . . . and shall be compounded annually." 28 U.S.C. § 1961(b).

Accordingly, the interest rate to be applied to Crystallex's judgment entered April 7, 2017 is 1.026%, the weekly average 1-year constant maturity Treasury yield for the week of March 26, 2017 through April 1, 2017. See Exhibit C.

The following formula may be used to calculate interest on a daily basis: $(1.026\%/365 \times D) \times B$, where (i) D is equal to the number of days of the year to date and (ii) B is the balance of the judgment as of April 7 of the preceding year, such amounts to be compounded annually on April 7 of each year.

² In addition to the outstanding judgment, Crystallex is entitled to recover fees and costs incurred as part of the sale process.

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Applying all partial payments and recoveries received to date (*see* Response to Request No. 4 above), the judgment has accrued \$69,545,992.67 in post-judgment interest as of August 14, 2023. Thus, the total amount outstanding on Crystallex's judgment as of August 14, 2023 is no less than \$990,144,701.47.

* * *

Finally, I confirm that counsel for Crystallex is sending directly to the Special Master and his Advisors an Excel document with a detailed calculation of the amount of Crystallex's judgment that remains outstanding.

Respectfully submitted,

/s/ Travis S. Hunter

Travis S. Hunter (#5350)

CC: All counsel of record

Enclosures:

- Exhibit A: A certification executed by Jason Myatt, counsel for Crystallex, confirming the truth and accuracy of this Attached Judgment Statement and that Crystallex will promptly inform the Special Master of any revised judgment amount within three business days following such change;
- Exhibit B: The judgment entered by the United States District Court for the District of Columbia on April 7, 2017 in *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, Civil Action No. 16-CV-00661 (D.D.C.) and entered on the docket in this proceeding at D.I. 1;
- Exhibit C: Weekly average 1-year constant maturity Treasury yield for the week of March 27, 2017 through March 31, 2017, available at <https://fred.stlouisfed.org/series/DGS1>;
- Exhibit D: The order issued by the District Court for the District of Columbia, dated March 25, 2017, granting Crystallex's petition to confirm its arbitral award, on file in this action as Exhibit 6 to the August 14, 2017 Declaration of Jason Myatt submitted with Crystallex's opening motion for a writ of attachment *fi fa* at D.I. 4-1, pp. 163–165.